

Appl. No. 09/418,902
Amdt. Dated May 14, 2004
Reply to Office action of Jan. 21, 2004

REMARKS/ARGUMENTS

Claims 1-18 and 54-72 are pending in the application. Claims 1-18 and 54-72 are rejected under 35 U.S.C. 103(a) as unpatentable over *Turner et al.* (U.S. 6,135,988), and, in the alternative in view of *Sageser, et al.* (U.S. 6,039,906). Applicants respectfully traverse each of these rejections. New claims 73-80 are added. Applicants appreciate the indication that Claim 59 contains allowable subject matter, but for being dependent from a rejected base claim.

To facilitate and expedite prosecution, Applicants propose canceling claims 61-72 (without prejudice). It is the Applicants' intent to resubmit claims of equivalent scope in a future filed continuation patent application. Withdrawal of these claims should not be construed as an admission that the claims are not patentable over the cited prior art. To the contrary, Applicants maintain their position that the cited prior art, individually or in combination, do not teach or suggest the invention defined by these claims.

Claim 1 is objected to on the basis of certain informalities. These informalities are addressed by way of the present Amendment. Withdrawal of the objection is respectfully requested.

Claim 1 recites a disposable absorbent article having, among other elements, a pair of end strips, each end strip being fixed, along a longitudinal direction, at a position intermediate the core and one of the end edges and extending between the side edges. The end strip includes at least three sections, each section having an elasticity and a position different from the other sections.

A first section is recited as having generally elastic properties and laterally extending in generally parallel relation with the end edges. A second section is disposed longitudinally inward of the first section and extends in generally parallel relation therewith. The second section is further recited as being characterized in that the first section is substantially more elastic than the second section. A third section is also recited as being positioned longitudinally inward of the second section, and having an inward portion spaced away from the topsheet and the absorbent core.

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Applicants respectfully maintain their position (as presented in previous Responses) that structural limitations in claim 1 providing the relative positioning of the first, second, and third sections, and structural limitations concerning the elasticity of or relative elasticity of the first and second sections are not taught or suggested by *Turner* or any of the other cited references, individually or in some combination with *Turner*.

The Examiner has the initial burden of presenting a *prima facie* case of obviousness. M.P.E.P. § 2142-43; see also *In re Peeks*, 612 F.2d 1287 (CCPA 1980). This requires the Examiner to meet three basic criteria. If the Examiner fails to meet any one of these three basic criteria, she has failed to present a *prima facie* case and any rejection based on 35 U.S.C. § 103(a) is improper. Applicants believe that, in the present case, one or more of the these three basic criteria has not been met. Accordingly, the standing rejections under 35 U.S.C. § 103(a) are improper.

A first criteria requires the Examiner to establish that all claim limitations are taught or suggested by the prior art. *In Re Roy*, 490 F.2d 981 (C.C.P.A. 1974). Applicants acknowledge that the Examiner could point to any three "sections" of the *Turner* article and allege that the three "sections" correspond to those recited in claim 1. The "three sections" of claim 1 are, however, distinct elements having distinct structural limitations. For any alleged "section" to properly correspond to an element, it must, therefore, have the same structural limitation. As an example, for an alleged "second section" to correspond, it must be (1) positioned longitudinally inward of the first section; (2) extend in generally parallel relation with the first section; and (3) the first section must be substantially more elastic than it. In the present case, the cited prior art lacks, among other elements, each of the first, second, and third sections as recited in claim 1.

In the Office action, it is suggested that FIG. 5 of *Turner* discloses a "first section" wherein parallel strands 54 are located, a "second section" positioned below (in respect to FIG. 5) the "first section," and a "third section" spaced away from the topsheet and the core (and having the adhesive areas 20). Applicants make note of the following distinctions between each of these three sections and their supposed corresponding parts as recited in the claims:

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1. The "first section" does not correspond with the first section of claim 1 because it does not laterally extend in generally parallel relation with the end edges of the diaper. On the contrary, the "first section" appears to extend in perpendicular relation with the end edges of the article.
2. The "second section" does not correspond with the second section of claim 1 because it is not a section of an end strip at all but a "seam 28a" of the "first section".
3. The "second section" does not correspond with the recited second section of claim 1 because the "second section" is *not disposed longitudinally inward* of the first section. It appears, instead, that the "second section" is *disposed generally laterally outward* of the "first section."
4. The "third section" does not correspond with the recited third section of claim 1 because it is not positioned longitudinally inward of the "second section." This "third section" appears, instead, to be aligned with the "second section" (and, as well, with the "first section").

Applicants note further that the modifications to *Turner* which would be required in order to meet the limitations of claim 1 (*i.e.*, creating three elastic and differently positioned sections of an end strip), do not advance any objective or purpose of the *Turner* absorbent article. In other words, there is no incentive, motivation, or suggestion to modify the *Turner* disposable absorbent article in the manner required by claim 1. Without such incentive, motivation or teaching, the *Turner* reference cannot provide the proper basis for a *prima facie* case of obviousness.

As for the *Sageser* reference, it also does not teach or suggest an end strip as recited in claim 1, nor does it cure any of the deficiencies of the *Turner* reference. Specifically, the provision of elasticized feature 30 or elasticized panels 32 in *Sageser* falls far short of a teaching or suggestion of a first section, a second section, and/or a third section, as recited in claim 1. Moreover, *Sageser* does not have three distinct sections relatively positioned as recited in the claim 1. *Sageser* also does not have a second section that is more elastic than the first section. Further, it does not have a third section with

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an inward portion spaced away from the topsheet and absorbent core. *Sageser* merely teaches an elastic panel sandwiched between the topsheet and backsheet.

Accordingly, claim 1 and claims dependent from claim 1 are patentable over the cited prior art, and are in condition for allowance.

Furthermore, neither of the *Turner* or *Sageser* references teach or suggest the additional elements recited in dependent claims 2-18. For example, in respect to claim 2, the cited references do not teach or suggest a second section formed from an elastic material and having at least one void provided therein. Claim 2 also recites that the void is adapted to substantially de-elasticize an area of the second section adjacent the void. The proposed "second section" (which is a seam 28) in *Turner* (1) is clearly not formed from an elastic material, (2) does not have at least one void, and (3) does not have a substantially de-elasticized area adjacent the void.

In respect to dependent claim 3, the proposed "first" and "second sections" are not secured to the topsheet.

In respect to claim 4, the proposed "end strip" is not formed from an elastic material. It also cannot have a second section that is substantially de-elasticized, as recited in claim 5.

New claim 73 is added to further highlight the Applicants' contribution to the art. Claim 73 recites that the end strip has an end strip end edge corresponding with the end edge of the article, and longitudinally extending side edges positioned in general perpendicular relation to the end strip end edge. Further, claim 73 recites that each of the first section, second section, and third section extends from one end strip side edge to the other end strip side edge, and in generally parallel relation with the end edge of the article. Neither the *Turner* or *Sageser* teaches a strip wherein the sections extend from one side edge to the other side edge, as recited in claim 73. In *Turner*, the alleged sections extend, instead, between the end edges and are laterally spaced apart.

New claim 74 depends from claim 73, and further recites that the end strip consists of the first, second, and third sections. The proposed "end strip" in the *Turner* or *Sageser* reference does not teach or suggest this additional feature. In other words, the proposed "end strip" in *Turner* has other sections

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or components and the three sections do not make up the end strip's entirety. For example, the flap 18 of FIG. 5 in *Turner* includes, in addition to the "first", "second", and "third sections", a section with the adhesives 20, the other "seam 28a", "seam 26", and perhaps, even other sections.

Claim 54 recites a disposable absorbent article having an end strip with features similar to those of the end strip of claim 1. For any one of the reasons set forth above with respect to claim 1, claim 54 is also patentable over the cited prior art.

Applicants note, however, that "rear end edge 43" in *Turner* is an edge; it is not a section or a "fixed waist section", as suggested in the Office Action. Further, it does not have an "elastic end section disposed substantially adjacent said edge" and it does not form an "elastic waistband", as also required by claim 54.

Additionally, the "elastic strands" of *Turner* do not represent an "elastic inward section." Claim 54 recites an inward section "having a central portion substantially spaced from said topsheet and said absorbent core". *Turner* does not teach, suggest or even represent a "central portion" as recited in the claim. Further, it does not teach, suggest or even represent securement to end portions of side walls such that the side walls are biased generally upwardly and a substantially continuous sidewall of a containment product is formed. Again, a §102 or §103 rejection requires that each and every element of the claim must be found in the reference or combination of references that provide the basis for rejection. That requirement is not met by the proposed references.

Claim 54 also recites the disposable absorbent article as having a pair of side walls, each side wall having oppositely disposed end portions, wherein one of the side walls extends generally longitudinally between the core and one of the side edges and the other side wall extends generally longitudinally between the core and the other side edge. The disposable absorbent article also includes a containment pocket disposed generally in the crotch region, and bounded by a substantially continuous sidewall disposed about the core and adapted to retain exudates received in the pocket. Finally, an inward section of the end strip is secured to end portions of the side walls such that the side

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walls are biased generally upward, and the inward section and the side walls substantially form the continuous sidewall of the containment pocket.

Applicants submit that the *Turner* reference does not teach or suggest, among other things, an inward section being specifically attached to a pair of side walls such that the side walls are biased generally upwardly. As discussed in Applicants' specification, this provides an advantageous structural feature that is part of the Applicants unique contribution to the art. *Turner* also does not teach or suggest a substantially continuous sidewall or a containment pocket. In fact, it does not disclose any kind of detainment feature at the front waist edge of the diaper (40).

Accordingly, claim 54, and each of dependent claims 55-60, contains additional patentable subject matter.

New Claim 76 recites a disposable absorbent article having an end strip with a fixed waist section and an elastic inward section having a central portion spaced upwardly from the topsheet and absorbent core. The fixed waist section includes an intermediate section with a plurality of voids adapted to substantially de-elasticize the intermediate section. The elastic inward section is further recited to have end portions secured to a pair of side walls such that the side walls are biased generally upward. Neither the *Turner* or *Sageser* reference teaches or suggests an end strip with a fixed waist section and/or an elastic inward section, as recited in claim 76. Additionally, none of the cited references teaches or suggest an elastic inward section secured to side walls as recited in claim 77.

Accordingly, new claim 76 and dependent claims 77-80 are patentable over the cited prior art.

In view of the above, each of the presently pending claims in this application is believed to be in immediate condition for allowance. Accordingly, the Examiner is respectfully requested to withdraw the outstanding rejection of the claims and to pass this application to issue.

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A Petition for an Extension of Time within one (1) Month is attached hereto. Also attached is a Credit Card Payment Form PTO-2038 in the amount of \$110.00 to cover the Extension of Time.

The Commissioner is hereby authorized to charge any additional fees or credit any overpayments related to this request to Deposit Account No. 50-0997 (AHP-P01896US0) maintained by Paula D. Morris & Associates, P.C.

The undersigned is available for consultation at any time, if the Examiner believes such consultation may expedite the resolution of any issues.

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Respectfully submitted,

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